CORY M. JONES, ESQ.
Nevada Bar No. 5028
JONES WILSON LLP
1522 W. Warm Springs Road
Henderson, Nevada 89014
(702) 405-6000
Attorney for Plaintiff

JONES WILSON LLP
1522 W. Warm Springs Road
Henderson, NV 89014
(702) 405-6000

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ANA TERESA PHILLIPS, Plaintiff, vs. SUN LIFE ASSURANCE COMPANY OF CANADA; DOES I through X, inclusive; and ROE CORPORATIONS I through X, inclusive, Defendants.	Case No. 2:16-cv-02322-RFB-GWF

AMENDED COMPLAINT IN CIVIL ACTION

NATURE OF ACTION, JURISDICTION AND VENUE

1. This action arises under the Employee Retirement Income Security Act of 1974 (hereinafter "ERISA") 29 U.S.C. §1001, et seq., and more particularly Section 1132(a)(1)(B) thereof.

2. Jurisdiction is vested in this Court because of the presence of a federal question, 28 U.S.C. §1331 and the Court's jurisdiction under ERISA, 29 U.S.C. §1132.

///

3. Venue is proper in the judicial district and pursuant to ERISA, 29 U.S.C. §1132(e)(2) because the plan may be administered in the district and venue, the breach took place in this district and venue, and the defendant is doing business in this venue.

THE PARTIES

4. Plaintiff ANA TERESA PHILLIPS (hereinafter referred to as "PHILLIPS") was at all times mentioned herein a resident of Clark County, Nevada.

5. Defendant SUN LIFE ASSURANCE COMPANY OF CANADA d/b/a SUN LIFE FINANCIAL ("SUN LIFE"), is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, and does business in the State of Nevada.

6. At all times material hereto, Defendant acted or failed to act through its agents, servants, workmen and/or employees who were then and there acting within the course and scope of such relationship.

7. Plaintiff PHILLIPS entered into a contract for Disability Insurance with Defendant, pursuant to her employment at MGM Resorts International.

8. The policy provides for a monthly job disability and other benefits subject to an Elimination Period.

9. Plaintiff has paid, through her employer, all necessary premiums to maintain the policy in full force and effect.

10. Plaintiff stopped working as Director of Housekeeping for MGM Resorts International due to medical issues on or about June 7, 2014, as a result of a hypoxic event secondary to a heart attack which occurred in approximately April of 2011.

11. Plaintiff attempted to continue in her employment after returning from recovering from her heart attack but was ultimately unsuccessful in her attempt.

12. Plaintiff sought to claim benefits under the Policy with Defendant and fully complied with all of the requests and conditions under the policy. Plaintiff also exhausted all of the administrative remedies.

13. Defendant has failed to honor the terms and conditions of the policy and to pay Plaintiff the benefits to which she is entitled.

FIRST CAUSE OF ACTION
[Specific Performance]

14. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 13 of this Complaint, and incorporates the same herein as if set forth in full.

15. The parties entered into an enforceable agreement under which Defendant would provide disability benefits to Plaintiff under the terms of the Policy.

16. The contract terms were reasonable and there was adequate consideration paid by the Plaintiff under the terms of the Policy.

17. Plaintiff requested the benefits to which she was entitled under the policy and was refused.

18. Legal remedies are unavailable to Plaintiff and she, therefore, requests this Court declare the Policy to be in effect and that Defendant provide the entitled benefit.

19. Plaintiff has been required to retain the services of an attorney to prosecute this action, and is, therefore, entitled to a reasonable award of attorneys' fees and costs.

SECOND CAUSE OF ACTION
[Breach of Fiduciary Duty]

20. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 19 of this Complaint, and incorporates the same herein as if set forth in full.

21. Defendant is a Fiduciary under the terms of ERISA.

22. Defendant breached its fiduciary duty to Plaintiff by failing to act in Plaintiff's best interests and by improperly denying benefits to Plaintiff under the terms of the Policy.

23. As a direct and proximate result of Defendant's breach, a cognizable loss to the Plaintiff resulted including the denial of benefits to which Plaintiff was and is entitled.

24. Plaintiff has been required to retain the services of an attorney to prosecute this action, and is, therefore, entitled to a reasonable award of attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests this Honorable Court to grant judgment in her favor and against Defendant and seeks the following relief:

(a) an adjudication that Plaintiff is presently totally disabled as that term is defined in the Policy and is entitled to continuous and uninterrupted disability payments for as long as her medical condition persists pursuant to the terms and conditions of the Policy;

(b) an award to Plaintiff of all applicable disability payments to which she is entitled, retroactive to the first date to which she complied with the terms of the Policy;

(c) an award of costs, reasonable attorney fees and prejudgment interest; and

(d) such other and further relief as this Court deems just and appropriate.

DATED this 12th day of October, 2016.

JONES WILSON LLP

By________________________

CORY M. JONES, ESQ.
Nevada Bar No. 5028
1522 W. Warm Springs Road
Henderson, NV 89014
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Federal Rules of Civil Procedure, I hereby certify under penalty of perjury that on this 12th day of October, 2016, the foregoing **AMENDED COMPLAINT IN CIVIL ACTION NATURE OF ACTION, JURISDICTION AND VENUE** was served upon the parties via the Court's e-filing and service program, addressed as follows:

Jill Garcia, Esq.
Erica J. Chee, Esq.
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
3800 Howard Hughes Parkway, Suite 1500
Las Vegas, NV 89169
Attorneys for Defendant Sun Life Assurance Company of Canada

An Employee of Jones Wilson LLP